

COPY

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH )  
BENEFITS FUND, et al, )

Plaintiffs )

-VS-

) CA No. 05-11148-PBS

) Pages 1 - 23

FIRST DATABANK, INC., )  
a Missouri Corporation; )  
and McKESSON CORPORATION, )  
a Delaware Corporation, )

Defendants )

STATUS CONFERENCE

BEFORE THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts  
February 9, 2006, 3:30 p.m.

LEE A. MARZILLI  
CERTIFIED REALTIME REPORTER  
United States District Court  
1 Courthouse Way, Room 3205  
Boston, MA 02210  
(617)345-6787

1     A P P E A R A N C E S:

2           THOMAS M. SOBOL, ESQ., Hagens Berman Sobol Shapiro LLP,  
3     One Main Street, Fourth Floor, Cambridge, Massachusetts,  
4     02142, for the Plaintiffs.

5           JOHN A. MACORETTA, ESQ., Spector, Roseman & Kodroff,  
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7     19103, for the Plaintiffs.

8           LORI A. SCHECHTER, ESQ., Morrison & Foerster, LLP,  
9     425 Market Street, San Francisco, California, 94105-2482, for  
10    McKesson.

11          JOAN M. GRIFFIN, ESQ., Burns & Levinson,  
12    One Beacon Street, Boston, Massachusetts, 02108, for  
13    McKesson.

14          MARK C. REDMAN, ESQ., The Hearst Corporation,  
15    1345 Avenue of The Americas, New York, New York, 10105,  
16    in-house counsel for The Hearst Corporation.  
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1 THE COURT: No.

2 MS. SCHECHTER: -- as was done in the MDL?

3 THE COURT: Unless I -- that was just different.

4 And if I become persuaded that I don't understand it, I'll  
5 back it off, but right now I'm not seeing that.

6 MS. SCHECHTER: Okay. I mean, we will seek to  
7 present some of the very same evidence that was presented to  
8 show that the self-administered class for TPPs cannot be  
9 certified in the same manner that your Honor has already  
10 ruled.

11 THE COURT: That may be true, I mean, because I  
12 really understand it now. I mean, the expert helped me  
13 through the industry.

14 MS. SCHECHTER: I don't mean the independent  
15 expert. I was just saying that the parties are going to push  
16 forth expert reports, and the plaintiffs had contemplated  
17 that in their order, and we'll need to take their  
18 depositions. That's all, that's all I was suggesting.

19 THE COURT: So play it out a little bit more for  
20 me. What do you mean? The experts on what? On --

21 MS. SCHECHTER: On class certification issues.

22 THE COURT: On what issue?

23 MS. SCHECHTER: Well, for example, the  
24 relationships between the PBMs and the TPPs and how it might  
25 affect the pricing that goes into this, the fact that --

1 THE COURT: Sure, all the things I saw last time.  
2 Anything new?

3 MS. SCHECHTER: Correct, but McKesson has not  
4 developed that evidence. We haven't even seen that evidence.

5 THE COURT: I think it's either all publicly  
6 available, and if it's not, move to either make it publicly  
7 available or to come in under the protective order.

8 MS. SCHECHTER: Okay, that would work for us  
9 because we don't have access to it because of the protective  
10 order.

11 THE COURT: But if you read my opinion, I mean,  
12 there may be new things because you're a wholesale level, and  
13 I dealt before with different levels, but we talked quite a  
14 bit about wholesale. Just I understand it better, and I may  
15 not decide to hire an independent expert.

16 MS. SCHECHTER: I'm just suggesting we would put in  
17 an expert report.

18 THE COURT: Oh, I'm assuming you will. That's fair  
19 enough. You don't know yet who your expert is?

20 MS. SCHECHTER: No, we do not.

21 MR. REDMAN: Your Honor, we would probably do the  
22 same. Again, it is a little different with a publisher  
23 actually in the case this time as opposed to on the fringes,  
24 so I just wanted to --

25 MS. SCHECHTER: So the issue only becomes, is the

C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS ) ss.  
CITY OF BOSTON )

I, Lee A. Marzilli, Official Federal Court  
Reporter, do hereby certify that the foregoing transcript,  
Pages 1 through 23 inclusive, was recorded by me  
stenographically at the time and place aforesaid in Civil  
Action No. 05-11148-PBS, New England Carpenters Health  
Benefits Fund Vs. First Databank, Inc., et al, and thereafter  
by me reduced to typewriting and is a true and accurate  
record of the proceedings.

In witness whereof I have hereunto set my hand this  
20th day of February, 2006.

  
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LEE A. MARZILLI, CRR  
OFFICIAL FEDERAL COURT REPORTER